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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,430	09/15/2003	Gregory T. Newman	45,024	4542
28309	7590	05/21/2004		
BOWERS HARRISON LLP GARY K. PRICE, ESP. 25 RIVERSIDE DRIVE PO BOX 1287 EVANSVILLE, IN 47706-1287			EXAMINER GUADALUPE, YARITZA	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/664,430	NEWMAN, GREGORY T. <i>pw</i>
	Examiner	Art Unit
	Yaritza Guadalupe	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 - 1: Certified copies of the priority documents have been received.
 - 2: Certified copies of the priority documents have been received in Application No. _____.
 - 3: Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandimarte (US 4,648,185) in view of Miller (US 6,421,928).

Brandimarte discloses a leveling and marking tool (10) for mounting an item having pre-cut mounting holes to a wall, and for making indenting marks in the wall that are in spaced apart relation to match the pre-cut mounting holes of the item to be mounted (See Column 2, lines 8 – 21), the leveling tool comprising a frame (12) having a front surface, a back surface (See Figures 1, 3, and 4), a lengthwise opening (14), a first projected tab (28) mounted in a fixed hole (30) at an end of the frame on the same axis as the lengthwise opening (See Figure 1), a second projected tab (18) movable in an axial direction along the lengthwise opening (See Column 2, lines 8-21), threadable locking means (22) for fixing the second projected tab in selected locations along the lengthwise opening spaced longitudinally from the first projected tab at a distance corresponding to the distance between the pre-cut mounting holes, at least one

bubble gauge (36, 40) mounted to the frame, and means associated with the first projecting tab and the second projected tab for accurately indenting said marks in the wall (See Column 2, lines 15 - 21).

Brandimarte also discloses the leveling and marking tool wherein the frame includes a printed reference scale (20) with the fixed hole serving as a zero point on the printed reference scale (See Column 2, lines 23 - 30). Brandimarte further discloses the leveling and marking tool wherein the locking means includes threads and passes through a longitudinal slot in the frame and wherein said fixed hole is a threaded hole (See Column 2, lines 8 - 21).

Brandimarte does not disclose the leveling and marking tool wherein the first and second projected tabs each have a conical point that outwardly projects from the back surface of the frame at an equal distance from the back surface of the frame, wherein the means for indenting the marks in the wall is performed by placing the back surface of the frame against the wall with the conical points of the first projected tab and the second projected tab in slight contact with the wall, aligning the frame against the wall, and firmly pressing the frame against the wall so that the said conical points firmly impact the wall as stated in claims 1 - 4.

With respect to the conical points as stated in claims 1 – 4 : Miller discloses a leveling and marking tool (10) wherein the first and second projected tabs each have a conical point (36, 37, 66) that outwardly projects from the back surface of the frame at an equal distance from the back surface of the frame (See Column 6, lines 18 – 49), wherein the means for indenting the marks in the wall is performed by placing the back surface of the frame against the wall with the conical points of the first projected tab and the second projected tab in slight contact with the wall (See Column 7, lines 45 – 51), aligning the frame against the wall, and firmly pressing the frame against the wall so that the said conical points firmly impact the wall (See Column 7, lines 45 – 51).

Conclusion

3: Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yaritza Guadalupe
Patent Examiner
Art Unit 2859
May 14, 2004


DIEGO F.F. GUTIERREZ
SUPERVISOR PATENT EXAMINER
TECHNOLOGY CENTER 2800

**CHRISTOPHER W. FULTON
PRIMARY EXAMINER**